IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 188 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK INDRAPRASAD VYAS & 1 - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MRS SHILPA R SHAH for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 26/04/2006

ORAL JUDGMENT

1. Heard the learned advocate Ms Shilpa Shah for the petitioners and Ms Nandini Joshi, learned Additional Public Prosecutor for the State.

2. The learned advocate representing the petitioners

has preferred the present application under Section 397 read with Section 401 of the Criminal Procedure Code agaisnt the order dated 15-2-2006 passed by the learned Fast Track Judge, Court No.5, Ahmedabad City in Sessions Case No. 153 of 2004 vide Exhibit 5, by which the learned Judge rejected the application for separate trial of the two cases having C.R. No.III–1/05, wherein common charge sheet was filed against all the accused. It is submitted by the learned advocate that the order passed by the learned Judge vide Exhibit 5 is illegal, improper and without appreciating the provisions contained in Sections 218 and 223 of the Criminal Procedure Code in proper perspective. The learned advocate further submitted that even though the offence against the petitioners is dated 3-2-2005 and the offence against the other four co-accused is dated 9-2-2005, the same are treated as arising out of the same transaction and even though, there is no evidence to suggest that the offences were committed during the course of same transaction, all are related with each other yet they are treated as arising out of the same transaction, and therefore, the order requires to be quashed and set aside. The learned advocate submitted that on perusal of Section 223 of the Criminal Procedure Code, it becomes clear that the

persons who are accused of the same offence committed in the course of the same transaction, can be charged jointly. In the facts and circumstances of the case, since the offence cannot be said to have been committed in the course of the same transaction, the revision application deserves to be allowed and the order passed by the learned Judge be quashed and set aside. The learned advocate further submitted that even it is not the case of the prosecution that there was any conspiracy and enough evidence was available to connect the petitioners with the second offence dated 9-2-2005. Thus, it is submitted by the learned advocate that the transaction has wrongly been clubbed as arising out of same act/transaction in both the offences dated 3-2-2005, wherein petitioners are involved and the offence dated 9-2-2005, wherein co-accused are involved. If the trial is held for the aforesaid offences of the petitioners along with the co-accused jointly, then it is likely to prejudice the petitioner and therefore, the order passed by the learned Judge requires to be quashed and set aside.

3. As against the aforesaid submissions, the learned Additional Public Prosecutor Ms Nandini Joshi

representing the State vehemently submitted that in view of the detailed affidavit-in-reply filed by Manoj Patel, Dy.S.P. and the averments contained therein, the order passed by the learned Judge requires to be upheld and as the petitioners have not made out the case for separate trial for the offences dated 3-2-2005 and 9-2-2005, the trial cannot be held separately. The learned Additional Public Prosecutor placed reliance on the affidavit-in-reply and submitted that in para 7 and 8, it has been stated that during the interrogation, the present petitioner No.1 namely Ashok Induprasad Vyas on 5-2-2005 made the statement that he purchased the seized contraband from Abdul Hamid, who is also known as Hamid, resident of super royal flat of Dabgarwad of Dariyapur and his accomplice Hayder, resident of Sankalitnagar in Juhapura in the last week for Rs.25,000/-. He also informed that Abdul Hamid and Hayder were procuring/purchasing a big chuck of contraband since last 3 to 4 years from Kashmir and to verify the aforesaid information, the trusted informants were deployed. On the information given by the informants, raid was carried out at 2:30 p.m. on 9-2-2005 and they were arrested with 15 kg of Charas. It is submitted by learned Additional Public Prosecutor that as the petitioners are connected

with the co-accused in an incident dated 9-2-2005, no separate complaint was lodged and the investigation was carried out further as part of the C.R. No.III–1/05 and common charge sheet was filed against all the accused. Thus, on the strength of the case papers and the detailed affidavit-in-reply, the offence was registered and common charge sheet was filed. As the revision application is devoid of merits, the same is required to be rejected.

4. Taking into consideration the averments in the revision application, the affidavit-in-reply filed on behalf of the State and the order passed by the learned Judge and produced along with revision application dated 10-10-2005, it becomes clear that the application was preferred under Section 218 read with Section 223 of the Criminal Procedure Code on behalf of the petitioners. As per the prosecution case, on the strength of the information received by the Poilce Inspector BP Vyas that one person named Ashok Induprasad Vyas having Kinetic Honda bearing Registration No. GJ-1-DK-3935 of black colour was to pass along with the accomplice with huge quantity of Charas from Chiloda to Naroda and he was caught red handed and Charas worth 1050.400 gm was recovered from his possession. Thereafter, on 9-2-2005, the co-accused for whom the Police Inspector BP Vyas

received information, were caught red handed from Vishala Bridge of Gyaspur shahvadi patiya with a huge quantity of Charas. It has been strenuously contended by the learned Additional Public Prosecutor Ms Nandini Joshi that since the petitioners and the co-accused were arrested in connection with the same transaction, no separate charge sheet was filed. However, on perusal of Section 223 of the Criminal Procedure Code, it becomes clear that;

(i)persons accused of the same offence committed in the course of the same transaction;

(ii)persons accused of an offence and persons accused of abatement of, or attempt to commit, such offence;

(iii)persons accused of more than one offence of the same kind, within the meaning of Section 219 committed by them jointly within the period of twelve months;

(iv)persons accused of different offences committed in the course of the same transaction;

(v)persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property, possession of which is alleged to have been transferred by any such

offence committed by the first – named persons, or of abatement of or attempting to commit any such last named offence;

(vi)persons accused of offences under Section 411 and 414 of the Indian Penal Code (45 of 1860), or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(vii)persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860), relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abatement of or attempting to commit any such offence; and the provisions contained in the formal part of this Chapter shall, so far as may be, apply to all charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

There are various tests with the judge as to consider as to whether different acts are part of the same transaction, such as (1) proximity of time (2) unity of place (3) unity of community of purpose or design and (4) continuity of action. If the offence is committed by the persons at a different place, then the same cannot be said to have been committed in the course of same transaction.

5. In the facts and circumstances of the case, the information with regard to the petitioners was received on 3-2-2005. The place and the timing of the arrest of the petitioners was quite different while the information with regard to the co-accused, which was subsequently received on 9-2-2005, and the time and place was also different. In pursuance of the said information, the co-accused came to be arrested on 9-2-2005. In view of the aforesaid facts and circumstances, since the offence cannot be prima facie said to be out of the same transaction, as there was no proximity of time, place and occurrence, the order passed by the learned Judge dated 15-2-2006 in Sessions Case No.153 of 2004 vide Exhibit 5 requires to be quashed and set aside.

6. In the light of the forgoing discussions, the present criminal revision application is allowed. The order passed by the learned Fast Track Judge, Court No.5, Ahmedabad city dated 15-2-2006 in Sessions Case No.153 of 2004 vide Exhibit 5 is quashed and set aside. The trial of the present petitioners be held separately from the Sessions Case No.153 of 2004. Notice discharged.

(H.B.ANTANI,J.)

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